1.S.B.CIVIL SECOND APPEAL NO.267/2004
Nagar Parishad, Bikaner vs. Suraj Ratan and ors.

2.S.B.CIVIL SECOND APPEAL NO.28/2002
Nagar Parishad, Bikaner vs. Kanhaiya Lal and ors.

3.S.B.CIVIL SECOND APPEAL NO.29/2002
Nagar Parishad, Bikaner vs. Shiv Shanker and ors.

4.S.B.CIVIL SECOND APPEAL NO.30/2002
Nagar Parishad, Bikaner vs. Manoj Kumar.

5.S.B.CIVIL SECOND APPEAL NO.31/2002
Nagar Parishad, Bikaner vs. Pawan Kumar.

6.S.B.CIVIL SECOND APPEAL NO.32/2002
Nagar Parishad, Bikaner vs. Surajratan.

7.S.B.CIVIL SECOND APPEAL NO.269/2004
Nagar Parishad, Bikaner vs. Manak Chand and ors.

DATE OF JUDGMENT ::: 9.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. D Mulchandani, for the appellant.
Mr. JL Purohit) for the respondents.
Mr. BK Vyas)

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Heard learned counsel for the parties.

All these appeals are decided by this common judgment.

Brief facts of the case are that pattas were issued in favour of the plaintiffs of different suits by Gram

Panchayat, Shivbari on or about 17.8.1986. Those pattas were got registered in the year 1990 by the Gram Panchayat itself. The District Collector, Bikaner by exercising powers under Section 27A of the Rajasthan Panchayat Act, 1953 (for short 'the Act of 1953') read with Rule 272 of the Rajasthan Panchayat General Rules, 1961 (for short 'the Rules of 1961') vide order dated 23.9.1993, cancelled the pattas of the plaintiffs. The plaintiffs filed separate suits for declaration and injunction and sought declaration that the order passed by Collector, Bikaner be declared illegal, null and void. It was further prayed that the defendants be restrained from evicting the plaintiff from the suit land. The defendant did not submit written statement despite opportunity given by the trial court. The plaintiff submitted documentary as well as oral evidence.

The trial court after taking note of the facts as mentioned above, observed that under the provisions of the Act of 1953 as well as Rules of 1961, the Collector has jurisdiction to call for record and examine the legality and validity of the order passed by the Gram Panchayat but the Collector had no jurisdiction to cancel the registered documents executed in pursuance of the resolution passed by the gram panchayat. The trial court also considered the fact that the pattas were issued in the year 1986 and those pattas were registered in the year 1990, therefore, it is not a case of giving pattas to the plaintiff without approval of the competent authority. The trial court also held that the pattas which were granted in the year 1986 could not have been challenged by this mode that too after

lapse of 7 years. It is also observed that even if there is no limitation prescribed for entertaining revision or appeal, even then, the action can be challenged within reasonable time and 7 years time cannot be a reasonable time to challenge the pattas or resolution of the gram panchayat. The trial court relied upon the judgments of this Court reported in 1992(1) RLW 694, 1989(1) RLW 147 and 1981 WLN (UC) 223.

The judgment and decree of the trial court dated 23.12.2000 was challenged by preferring separate appeals by the State of Rajasthan and Collector, Bikaner. The judgment was not challenged by the present appellant Municipal Council, Bikaner. The lower appellate court dismissed the appeals by separate judgments and decrees dated 19.10.2001. Hence, these appeals.

Learned counsel for the appellant Municipal Council, Bikaner submits that originally, the Municipal Council, Bikaner was not impleaded as party in the suit by the plaintiffs in all the cases and the Gram Panchayat alone was impleaded as party. In fact, the property in question came in the jurisdiction of the Municipal Council with effect from 19.2.1986 before the pattas were issued by the gram panchayat. According to learned counsel for the appellant, the suit of the plaintiffs should have been dismissed only on the ground that the Municipal Council was not impleaded as party. It is also submitted that the Municipal Council was impleaded as defendant at belated stage. However, learned counsel for the appellant submits

that the appellant was given opportunity to file written statement and the appellant in fact submitted written statement before the trial court. Despite this opportunity, for the reasons best known to the appellant, no evidence was produced by it before the trial court. Be it as it may be. Even the trial court's judgment was not challenged by the appellant by preferring first appeal and when first appeal preferred by the State was dismissed by the first appellate court, this second appeal has been preferred by the appellant.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It is not in dispute that the decision to give land to the plaintiffs by the Gram Panchayat was taken as back as in the year 1986. Said resolution of the year 1986 was never challenged till 1990 and those pattas were registered by the gram panchayat. The pattas were never challenged till the proceedings were taken under Rule 272 of the Rules of 1961. The Collector cancelled the registered pattas issued by the gram panchayat in favour of the plaintiffs. The trial court after considering the relevant provisions of law particularly Rule 272, clearly observed that the action of the gram panchayat could have been challenged but within reasonable period of time which has not been done and further the registered document cannot be cancelled in this manner after six years of resolution of the gram panchayat. The plaintiffs are in

possession of the suit property since last 20 years. The vesting of the property in the Municipal Council could have been a ground for contesting the suit by the Municipal Council but it did not produce any evidence despite the Municipal Council was impleaded party in the trial court itself and it submitted written statement before the trial court. There is no material available on the record from which it can be gathered that the said property was transferred to Municipal Council on 19.2.1986. Not only this, the Municipal Council did not challenge the judgment and decree of the trial court and the appeal filed by the State was dismissed by the first appellate court, then the appellant took opportunity to challenge the judgment and decree of the trial court in second appeal.

It will be worthwhile to mention here that the State, who was aggrieved against the judgment and decree of the trial court, did not challenge the judgment and decree of the first appellate court.

In these circumstances, the persons in favour of whom the pattas were issued by the local bodies and were given possession, cannot be ousted by the appellant and respondent State.

In view of the above, I do not find any merit in these appeals and the same are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya